

REMARKS

Reconsideration of the rejection set forth in the Office Action is respectfully requested.

Rejection of claims under 35 USC 101

Claims 12-13 were rejected under 35 USC 101 as being directed to non-statutory subject matter. Applicants have amended independent claim 12 to overcome this rejection and respectfully request that it be withdrawn.

Rejection of claims under 35 USC 102 and 103

Claims 1-2 and 5-11 were rejected under 35 USC 102(e) as anticipated by Rapaport (U.S. Patent Application Publication No. 2006/0161457). Independent claims 12-13 were rejected under 35 USC 103 as unpatentable over Rapaport in view of Walker (U.S. Patent Application Publication No. 2001/0039580). These rejections are respectfully traversed in view of the amendments to the claims and the following arguments.

In the previous response, applicants explained in great detail that Rapaport teaches a software program that monitors e-mail, telephone messages, faxes, and other forms of communication into and out of a physician's office. This application, by contrast, is focused on monitoring the status of transmission of a medical image across a communication network. As discussed by applicants in paragraph 5 of the specification, a communication network is created by interconnecting network elements such as computers, servers, nodes, routers, switches, bridges, hubs, proxies, and other network devices with communication links and configuring the network elements to pass protocol data units between each other.

In Walker, the underlying communication network is assumed, and the system in Rapaport does not monitor how the network elements within the communication network are operating or whether a particular medical image is delayed while being transported across the communication network.

In the response to arguments section, (page 2 of the Office Action) the Examiner stated that "examiner equates alerts medical providers of problems encountered in making urgent delivery attempt is equated as a delay in the delivery of the medical image." This verbiage also appears on page 4 of the Office Action, in which the Examiner cited Rapaport at Paragraph 545.

In the portion of Rapaport including paragraph 545, Rapaport is discussing interview response messages which are generated when an interview has been completed (Rapaport at Par. 536). In paragraph 543, Rapaport states that the response handler will use information in the response message to update the status of the interview. Specifically, the response handler will update the interview to indicate whether the interview was successfully completed, the delivery time, whether there was a hangup (i.e. whether the person/doctor, etc., hung up) whether the channel was busy (i.e. whether the phone line was busy), any errors, whether a person answered when called, etc.

This has nothing to do with monitoring transmission of a medical image across a communication network. Rather, Rapaport uses interviews to follow up with patients. This portion of Rapaport explains how the system tracks the status of an interview once the interview has been delivered. For example, if the interview required the medical office to make a telephone call to the person, the interview response message may indicate that the person wasn't home.

Applicants have amended the claims to clarify that what is being claimed is monitoring transmission of a medical image network transaction within the network itself. For example, independent claim 1 has been amended to recite that the medical image network transaction is between a data source and a data target on the data communication network, that the monitoring is done by a medical image transport service deployed on the electronic data communication network, and that the data communication network includes a plurality of network elements interconnected by communication links and configured to pass protocol data units between each other by utilizing the communication links. Further, independent claim 1 has been amended to recite that the medical image network transaction relates to the delivery of the medical images as the medical images are transported by exchanging protocol data units between the network elements over the communication links as the medical images are transferred between the data source and data target within the data communication network; and

Independent claim 13 has been amended to recite that the data communication network includes a plurality of network elements interconnected by communication links and configured to pass protocol data units between each other by utilizing the communication links, and wherein the transmissions of medical images on the communication network that are monitored by the data management service are implemented using the protocol data units.

In view of the amendments to the claims, applicants respectfully submit that the claims are allowable over Rapaport alone, or in combination with Walker.

Conclusion

In view of these amendments and remarks, applicants respectfully submit that the claims pending in this application are in condition for allowance and respectfully request an action to that effect. If the Examiner believes a telephone interview would further prosecution of this application, the Examiner is respectfully requested to contact the undersigned at the number indicated below.

Extension of Time

Applicants request a one month extension of time to respond to the outstanding Office Action. Payment of the fee for the one month extension of time is being submitted herewith. If any additional fees are due, the Commissioner is hereby authorized to charge payment of the fees associated with this communication or credit any overpayment to Deposit Account No. 502246 (Ref: 909426-US-NP).

Respectfully Submitted

Dated: May 14, 2010

Anderson Gorecki & Manaras LLP
P.O. Box 553
Carlisle, MA 01741
Tel: (978) 264-4001
Fax: (978) 264-9119
john@gorecki.us

/John C. Gorecki/
John C. Gorecki, Reg. No. 38,471